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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,270	10/31/2003	Merlin A. Rhoda	10030966-1	9202
22878 7590 01/25/2010 AGILENT TECHNOLOGIES INC. INTELLECTUAL PROPERTY ADMINISTRATION,LEGAL DEPT. MS BLDG. E P.O. BOX 7599 LOVELAND, CO 80537				
EXAMINER WASEL, MOHAMED A				
ART UNIT 2454		PAPER NUMBER		
NOTIFICATION DATE 01/25/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

IPOPS.LEGAL@agilent.com

Office Action Summary

Application No.

10/697,270

Applicant(s)

RHODA ET AL.

Examiner

MOHAMED WASEL

Art Unit

2454

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

Response to Amendment

This action is responsive to amendment filed on September 23, 2009. Claims 6, 12 and 14 have been amended. Claims 1-15 are pending and presented for examination.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 12-14 are rejected under 35 U.S.C 101 because the claimed invention is directed to non-statutory subject matter.

Claim 12 is directed to a communication test/measurement agent (**software module**), which does not fall within the four statutory classes of 101. Applicant is advised to direct the claim language to a communication test/measurement agent stored on a tangible, **non-transitory storage** medium such as hard disk, CD- ROM or the like to overcome the 101 rejection. Appropriate corrections are required.

Claims 13 and 14 are rejected under the same rationale as claim 12 due to their dependency.

Applicant's response with respect to the 101 rejection has been noted. However, current amendment to independent claim 12 did not overcome the 101 rejections of claims 12-14. Software per se does not fall within the four statutory classes of 101 as aforementioned. Software modules must be first stored within a physical hardware media prior to being executed by a system processor. Therefore, 101 rejection is maintained.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Barnard et al, (hereinafter referred to as "Barnard") US Patent No. 7,231,555.

1. As per claim 1, Barnard teaches a method of extending a communication test/measurement agent, comprising:

providing the communication test/measurement agent (col. 3 lines 51-57) with built-in functionality to allow a communication test/measurement system or client to generically communicate with and operate the agent (col. 3 lines 51-57, col. 4 lines 23-34; collecting data from many different data sources or agents); and

providing the communication test/measurement agent with built-in functionality to allow the agent to automatically recognize and dynamically incorporate interface-specific plugins (col. 6 lines 4-14; plug- ins) that are specific to different types of communication interfaces and which allow the communication test/measurement client or system to communicate with the respective different types of communication interfaces (col. 5 line 53 - col. 6 line 14; selection of measurement may be determined by an automated process using API).

2. As per claim 2, Barnard teaches a method wherein the incorporating is done by loading code of a plugin into the agent (col. 5 lines 53-65; test plug-ins).

3. As per claim 3, Barnard teaches a method wherein a plugin is recognized and incorporated after the communication test/measurement agent has been deployed for communications test/measurement and without reprogramming the agent (col. 8 lines 44-64).

4. As per claim 4, Barnard teaches a method wherein a plugin communicates with an application program that drives a communication interface of the type corresponding to the plugin (col. 6 line 65 - col. 7 line 19).

5. As per claim 5, Barnard teaches a method wherein the agent provides a basic API to the central communication test/measurement system that is independent of any communication interfaces (col. 6 lines 15-35; configuration setting may be applied through an API), and wherein the plugins extend the API for the respective types of interfaces (Fig. 4, col. 8 line 28-43).

6. As per claim 6, Barnard teaches a method wherein one plugin for a particular type of

communication interface allows communication with different communication interfaces of the particular type (col. 8 lines 44-64).

7. As per claim 7, Barnard teaches a method wherein an extensible language is used to communicate with the API (col. 5 lines 5-12), wherein a base set of commands of the extensible language corresponds to the built-in functionality, and wherein the recognizing and incorporating of a plugin further comprises extending the extensible language with additional verbs that are specific to the plugin (Fig. 4, col. 8 lines 28-43; a user may start a test by either direct input through GUI or by an automated process).

8. As per claim 8, Barnard teaches a method of communication with network analysis software, the method comprising:

 sending requests from a communication testing console to a communication agent (Fig. 4, col. 8 lines 28-43);

 receiving the requests at the agent (col. 8 lines 44-64);

 when a first one of the requests is directed to a communication interface, handling the first request with a plugin of the agent that is specific to the type of the communication interface and when a second one of the requests is not directed to a communication interface, handling the second request with a common generic portion of the agent (col. 8 lines 44-64; Agent manager provides specific information on the management of data to be measured, including pre-configuration setting information and instructions to start measurement).

9. As per claim 9, Barnard teaches a method wherein the plugin responds to the first one of the requests with a response received from an application program that drives the communication interface to which the first request is directed (col. 6 line 65 - col. 7 line 19).

10. As per claim 10, Barnard teaches a method wherein the common generic portion of the agent handles the second request by generating a response to the second request (col. 3 lines 40-49).

11. As per claim 11, Barnard teaches a method of extending a communication agent that provides a communication point for a console of a communication test/measurement system (col. 3 lines 51-57), the method comprising:

 deploying the communication agent (col. 3 lines 51-57), where the communication agent is

deployed on a computing device comprising a communication interface and communicates with the communication interface using a driver application program, and where the console programmatically accesses the agent and accesses the interface through the agent (col. 6 line 65 - col. 7 line 19); and

after the deploying, making the deployed communication agent aware of a new communication interface by installing on the computing device plugin software that can handle commands specific to the new communication interface, where the agent self-recognizes the plugin software and self-integrates the plugin software, whereby the plugin software becomes part of the agent and allows the console to send commands to the new communication interface (col. 2 lines 29-61).

12. As per claim 12, Barnard teaches a communication test/measurement agent instantiated in storage medium, comprising:

built-in code to allow a central communication test/measurement system to generically communicate with and operate the agent (col. 3 lines 51-57, col. 4 line 23-43); and

built-in code to allow the agent to automatically recognize and dynamically incorporate interface-specific plugins (col. 6 lines 4-14) that are specific to different types of communication interfaces and which allow the network test/measurement system to communicate with the respective different types of communication interfaces (col. 5 line 53 - col. 6 line 14). 13. As per claim 13, Barnard teaches a communication/test measurement agent further comprising an interface table comprising entries, wherein the agent adds an entry in the interface table to correspond to a new plugin which the agent has incorporated (col. 2 lines 50-61).

13. As per claim 14, Barnard teaches a communication measurement agent, wherein entries in the interface table identify a plugin for a type of communication interface and a corresponding communication interface of that type (col. 2 lines 50-61).

14. As per claim 15, Barnard teaches a machine-readable storage storing information enabling a network test/measurement agent to perform a process, the process comprising:

receiving and processing generic communications from a central communication test/measurement system to generically operate the network test/measurement agent; and

recognizing and dynamically incorporating into the network test/measurement agent interface-

specific plugins that are specific to different types of communication interfaces and which allow the central communication test/measurement system to communicate with the respective different types of communication interfaces (col. 3 lines 51-57, col. 4 lines 23-34).

Response to Argument(s)

Applicant's argument(s) filed on September 23, 2009 have been fully considered but they are not persuasive. Therefore, rejection is maintained.

- In the remarks, the Applicant argues in substance that:
 - a) Barnard fails to teach or suggest providing the communication test/measurement agent with built-in functionality to allow the agent to automatically recognize and dynamically incorporate interface-specific plugins that are specific to different types of communication interfaces and which allow the communication test/measurement client or system to communicate with the respective different types of communication interfaces as recited in the context of independent claim 1.
 - b) Barnard fails to teach or suggest when a first one of the requests is directed to a communication interface, handling the first request with a plugin of the agent that is specific to the type of the communication interface and when a second one of the requests is not directed to a communication interface, handling the second request with a common generic portion of the agent as recited in the context of independent claim 8.
- In response to argument(s):
 - a) Examiner respectfully disagrees. Applicant is reminded that claims must be given their broadest reasonable interpretation. Barnard discloses an Agent Manager that provides management of how data is to be measured. The Agent Manager and the Data Collector are basically two units that have specific knowledge of what needs to be supplied for the measurements. The selection of the measurement to be taken may be determined by an automated process using an API (col. 5 line 53 – col. 6 line 14). In further details, Barnard discloses providing a common framework to correlate measurements obtained from different

devices, at least two of the devices providing data of a different type and synchronizing the measurements obtained from the different devices (col. 2 lines 15-20).

- b) Barnard discloses an orchestrated test starts by either input from a user or by an automated process. Then the Test Manager instructs the orchestrated performance of the Agent measurement, including which Agent will be implemented to provide the data to be measured at that time. The Agent Manager provides specific information on the management of the data to be measured, including pre-configuration setting information and instructions to start the measurement. Once the specific information is provided by the Agent Manager, Data Collector receives the measurement results then forwards the results collected over time to the Test Manager, which then forwards the results for presentation or storage to either the GUI or the API (col. 8 lines 44-64). Therefore, Barnard meets the scope of the claimed limitations as currently presented. Examiner believes that amendment to the claims to explicitly distinguish the claimed subject matter would clearly define the scope of the claimed invention and possibly overcome art in record. In an effort to expedite the prosecution of this case, Applicant is invited to contact the Examiner to discuss possible amendment to the claim language to better define the scope of the claimed invention.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mohamed Wasel whose telephone number is (571) 272-2669. The examiner can normally be reached on Mon-Fri (8:00 am - 5:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Flynn can be reached on (571) 272-1915. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mohamed Wasel/
Patent Examiner, Art Unit 2454
January 6, 2010

/NATHAN FLYNN/
Supervisory Patent Examiner, Art Unit 2454